



Billing Code: 4210-67

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5773–N–01]

**Adoption of Updated Standard ASTM E 1527-13
Standard Practice for Environmental Assessments:
Phase I Environmental Site Assessment Process**

AGENCY: Office of Housing of the Assistant Secretary for Housing – Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice updates guidance documents of HUD’s Office of Housing and Federal Housing Administration (FHA) that reference the ASTM E 1527-05 standard for Phase I Environmental Site Assessments (ESAs) to the most recent standard, ASTM E 1527-13.

DATES: Effective Date: **[Insert date that is 30 days from the date of publication in the Federal Register]**

FOR FURTHER INFORMATION CONTACT: Hilary Atkin, Housing Environmental Officer, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 9132, Washington, DC 20410, telephone 202-402-3427 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background.

HUD environmental regulations state that “[i]t is HUD policy that all property proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gasses, and radioactive substances, where a hazard could affect the health and safety of

occupants or conflict with the intended utilization of the property” (24 CFR 50.3(i)(1)). In order to accomplish this policy, “HUD shall require the use of current techniques by qualified professionals...” (24 CFR 50.3(i)(4)). Currently, a Phase I ESA in accordance with ASTM E 1527-05 is required by several guidance documents throughout Office of Housing/FHA, including, but not limited to, the Multifamily Accelerated Processing (MAP) Guide, the Condominium Project Approval and Processing Guide, Handbook 4600.1 REV-1, Section 232 Mortgage Insurance for Residential Care Facilities, and Handbook 4615.1, Mortgage Insurance for Hospitals.

In November 2013, ASTM International published ASTM E 1527-13, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process. ASTM E 1527-13 defines good commercial and customary practice in the United States for conducting an Environmental Site Assessment (ESA) of a parcel of commercial real estate with respect to the range of contaminants within the scope of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. 9601) and petroleum products. In order for a defendant to limit liability for a release of hazardous substances, CERCLA requires that the defendant has “no reason to know” that the hazardous substance involved in the release or threatened release was present. In establishing no reason to know, the defendant must be able to show that it carried out, on or before the date on which the defendant acquired the facility, all appropriate inquiries into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices, and took other reasonable steps (42 U.S.C. 9601(35)(B)(i)). The standards and practices that determine whether all appropriate inquiries have been carried out are established by regulation by the Environmental Protection Agency (EPA) (42 U.S.C. 9601(35)(B)(ii)). On December 30, 2013,

the EPA updated these standards, and allowed parties to use ASTM E 1527-13 rather than the previous standard, ASTM E 1527-05 (78 FR 79319).

HUD's regulation at 24 CFR 50.3(i)(1) states as a matter of policy that all property to be used in HUD programs be free of hazardous substances, and § 50.3(i)(2) requires that HUD's environmental review include evaluation of previous uses of the site and other evidence of contamination on or near the site, "to assure that occupants of proposed sites are not adversely affected" by hazardous substances. Additionally, FHA's General Insurance Fund (GIF) and Mutual Mortgage Insurance (MMI) Fund can be at legal risk if HUD acquires a property and subsequently a hazardous substance is released or threatened to be released. For these reasons, adoption of the updated standard protects the GIF and MMI Fund from risks stemming from insuring sites with hazardous waste and/or petroleum product contamination. The updated standard will better equip HUD's Office of Housing/FHA staff to assess such risks as the standard includes updated definitions that will more fully inform the Office of Housing/FHA about the environmental conditions on the subject property.

One advantage of ASTM E 1527-13 is that it newly defines Controlled Recognized Environmental Conditions (CREC), which must be identified in the Phase I ESA. The new CREC definition will result in some environmental conditions being listed as CRECs if they have been remediated to restricted levels, as opposed to an unrestricted or de minimis level, and will be a great tool for Office of Housing/FHA staff to assess whether the site is appropriate for residential use. The definition does not create new analyses or documentation, as Phase I ESAs that were compliant with ASTM E 1527-05 would have discussed CRECs in the context of being either a Recognized Environmental Condition (REC) or a Historical Recognized Environmental Condition (HREC).

The ASTM E 1527-13 standard also newly defines migration, which includes hazardous waste or petroleum products in vapor form. Previous to this definition, it was unclear whether vapors had to be assessed under a Phase I ESA, and as a result many Phase I ESA reports did not include this analysis. The new definition will generally not change Office of Housing/FHA Phase I ESA report requirements, however, as the Office of Housing/FHA has required that a Vapor Encroachment Survey performed in accordance with ASTM E 2600-10 be incorporated into the Phase I ESA report for several years, and will continue to do so.

Finally, ASTM E 1527-13 modifies the definitions of HREC to require evaluation of whether a historical release of a hazardous waste or petroleum product that was addressed to the satisfaction of the regulatory authority in the past is considered a REC at the time the Phase I ESA is prepared because of a change in regulatory criteria. Such an analysis was conducted by many Phase I ESA preparers under the past standard, but the modification of the definition clarifies this requirement.

II. Action.

ASTM E 1527-13 is formally adopted by the Office of Housing/FHA through this notice. Wherever ASTM E 1527-05 is referenced in Office of Housing/FHA guidance, participants in Office of Housing/FHA programs, funding recipients, FHA-insured mortgagees, and contractors must use ASTM E 1527-13. The Office of Housing/FHA will update guidance documents to reflect the adoption of ASTM E 1527-13 for Phase I ESA reports.

Dated: April 10, 2014.

Carol Galante,
Assistant Secretary for Housing –
Federal Housing Commissioner.

[FR Doc. 2014-08629 Filed 04/15/2014 at 8:45 am; Publication Date: 04/16/2014]